

Section 6.1 in excess of \$20 million in the aggregate in any calendar year;

- (C) mortgage, pledge or subject to liens or other encumbrances or charges any assets, except by incurring CareFirst Permitted Liens;
- (D) purchase or commit to purchase any capital asset outside of the relevant CareFirst Company capital plan for a price exceeding \$5 million individually or \$25 million in the aggregate per calendar year;
- (E) terminate or amend in any material respect any CareFirst Material Contract or any insurance policy, in force on the date hereof;
- (F) amend its charter or bylaws (provided, however, the foregoing will in no way limit the actions which are required to be taken by CareFirst pursuant to Section 6.8);
- (G) acquire (whether by merger, consolidation, share exchange, acquisition of stock, or acquisition of assets) any corporation, partnership, joint venture, or other business (or any part thereof), except where the consideration paid by CareFirst in connection with such acquisition (including any debt assumed as a result thereof) is less than \$5 million individually or \$25 million in the aggregate in any calendar year;
- (H) split, combine or reclassify its outstanding capital stock or declare, set aside or pay any dividend or distribution payable in cash, stock, property or otherwise, except for payments or distributions by a wholly-owned subsidiary of CareFirst to CareFirst or to another wholly-owned subsidiary of CareFirst;
- (I) except for the issuance of CareFirst Common Stock to the Tax-Exempt Entities in connection with the Conversion, issue, sell, pledge or dispose of, or agree to issue, sell, pledge or dispose of or otherwise cause to become outstanding any additional shares of or any options, warrants or rights of any kind to acquire any shares of its capital stock of any class or any debt or equity securities convertible into or exchangeable for such capital stock;
- (J) incur or become contingently liable with respect to any indebtedness for borrowed money or purchase money indebtedness, other than borrowings under CareFirst's revolving credit facility not to exceed an aggregate principal amount of \$30 million;

the Merger Bonus Plan shall be made in restricted shares of Purchaser Common Stock having a fair market value as of the Closing Date equal to the value of the cash payments that would be received under the Merger Bonus Plan. For this purpose, the Average Market Price shall represent the fair market value per share of Purchaser Common Stock. The shares of Purchaser Common Stock to be received by such participants shall be granted under the Purchaser's standard terms and conditions for restricted share grants, including a provision that vests ownership in the underlying shares of Purchaser Common Stock over a three-year period assuming continued employment with the Surviving Corporation, the Purchaser or any of their Affiliates. [SUBJECT TO REVIEW OF TERMS OF PURCHASER RESTRICTED STOCK II.]

(share rights to receive)

right

(b) Purchaser or Transition Team Consent. In the event CareFirst seeks the approval or consent of the Purchaser or the Transition Team for any action under Section 6.1(a), the proposed action shall be deemed approved or consented to by the Purchaser or the Transition Team if no objection has been provided within ten (10) business days after the date of CareFirst's request for approval or consent (provided that such request also includes information reasonably requested by Purchaser to evaluate such request).

by Purchaser or its representatives on the Transition Team

(c) Purchaser. Purchaser hereby covenants and agrees that, except as consented to in writing by CareFirst, pending the Closing, Purchaser will, in all material respects, operate and conduct its business, and that of the Purchaser Subsidiaries, only in the ordinary course in accordance with prior practices. In addition to the foregoing (for purposes of the following, "Purchaser" shall be deemed to include CFAC and the Purchaser Subsidiaries):

(i) Purchaser shall maintain its assets in their present state of repair (ordinary wear and tear excepted), shall use its Best Efforts to keep available the services of its employees, and preserve the goodwill of its business and relationships with the customers, licensors, suppliers, distributors and brokers with whom it has business relations; and

(ii) Purchaser shall not:

- (A) amend its charter or bylaws in any manner that would adversely affect the ability of Purchaser to consummate the transactions contemplated by this Agreement;
- (B) acquire (whether by merger, consolidation, share exchange, acquisition of stock, or acquisition of assets) any corporation, partnership, joint venture, or other business (or any part thereof), except where such acquisition will not materially adversely affect or delay Purchaser's or CareFirst's ability to consummate the transactions contemplated by this Agreement;
- (C) incur or become contingently liable from the beginning of the time period for the calculation of the Average Market Price through the Closing Date, declare, set aside, make or pay any dividend or other distribution (other than a share repurchase in accordance with Purchaser's share repurchase program), payable in cash, stock, property or otherwise, with respect to

agents as in effect immediately prior to the Closing, which provisions will not be amended, repealed or otherwise modified except as required by applicable law, or except for changes permitted by law that would enlarge the rights under such provisions, or would not adversely affect the rights thereunder, of individuals who, on or prior to the Closing Date, were trustees, directors, officers, fiduciaries, employees or agents of CareFirst or the CareFirst Subsidiaries, as the case may be. category 50 F

(b) CareFirst shall, and Purchaser shall cause CareFirst and the CareFirst Subsidiaries to, maintain in effect, liability insurance against claims asserted based on acts or omissions occurring at or prior to the Closing covering those persons who are currently covered by CareFirst's or the CareFirst Subsidiaries' (as the case may be) liability insurance policy or policies, on terms substantially as favorable as the terms of such insurance coverage in effect as of the date hereof, so long as, on a cumulative basis over a period of the required six years the effective average annual premium for such coverage would not be in excess of 200% of the last annual premium paid prior to the date of Closing hereof (the "Current Premium"). If the average annual premiums for such insurance would at any time exceed 200% of the Current Premium, then Purchaser shall cause to be maintained policies of insurance that provide the maximum coverage available at an average annual premium equal to 200% of the Current Premium.

(c) In the event Purchaser, CareFirst or any CareFirst Company or any of their respective successors or assigns (i) consolidates with or merges into any other person and is not the continuing or surviving corporation or entity of such consolidation or merger or (ii) transfers all or substantially all of their respective properties and assets to any person, then, and in each such case, proper provision will be made so that the successors and assigns of Purchaser, CareFirst and any CareFirst Company, as the case may be, will assume the obligations set forth in Sections 6.9(a) and (b) if they are not otherwise assumed by operation of law.

(d) This Section 6.9: (i) will survive the Closing; (ii) is intended to benefit each CareFirst Company, and the individuals who at or before the Closing were trustees, directors, officers, fiduciaries, employees and agents of any CareFirst Company, and their respective heirs, executors, administrators, representatives and successors; and (iii) is in addition to, and not in substitution for, any other rights to immunity, exculpation, indemnification, contribution or insurance that any such individual may have by contract or otherwise.

#### Section 6.10. Hart-Scott-Rodino Notification.

Each of CareFirst and Purchaser shall prepare and file on a date agreed to by the parties a notification with the DOJ and the FTC as required by the HSR Act. Each party shall cooperate with each other party in connection with the preparation of such notification, including sharing information concerning sales and ownership and such other information as may be needed to complete such notification. The parties further agree to cooperate with one another to the extent necessary to comply with any requests by the DOJ or the FTC under the HSR Act for additional information arising from the notification. Each party shall keep confidential all information about the other party obtained in connection with the preparation of such notification or response to requests for additional information.

~~create a collective enterprise which will provide additional financial strength for the customers of each of the parties, will allow each of the parties access to necessary capital to support strategic initiatives and will position the collective enterprise as a more significant regional competitor,~~

~~allow the Primary CareFirst Companies to continue as separate corporations subject to local regulation and with a significant level of local operational control;~~

~~create an organizational structure for the Primary CareFirst Insurers that retain key employees of each; and~~

~~cause, allow and assist the Primary CareFirst Insurers to continue to maintain a significant presence within their respective jurisdictions, including the operation of facilities located in each jurisdiction, the maintenance of the corporate headquarters of each within their respective jurisdictions and the provision of products and services to residents in their respective jurisdictions.~~

#### Section 6.18. Employee Benefits

(To be discussed.) Employee Benefits.

*hereof*

(a) ~~From the Effective Time through the fourth anniversary of the date of this Agreement, Purchaser and the Surviving Corporation shall not cause or permit any CareFirst Plan to be amended, suspended or terminated in any manner that could have any adverse effect on the benefits or any right of any participant or beneficiary therein (other than with respect to an employee whose employment is covered by a collective bargaining agreement), except as required by law (or as approved by the President of CareFirst). From the Effective Time through the fifth anniversary of the Closing Date, Purchaser and the Surviving Corporation shall not cause or permit the CareFirst of Maryland, Inc. Retirement Plan or the Group Hospitalization and Medical Services, Inc. Pension Trust Plan (collectively, the "Pension Plans") to be amended, suspended or terminated in any manner that could have any adverse effect on benefit accruals during such five-year period (including any reduction in the rate of accrual) of any employee who, as of the Closing Date, is a vested participant, has attained age 45 and has a sum of age and years of service of at least 65. After the Effective Time, if any person's employment is transferred from a CareFirst Company to Purchaser or an Affiliate thereof, and if, as a result of such transfer, a CareFirst Plan ceases to cover such employee, then Purchaser and the Surviving Corporation shall cause another employee benefit plan to provide the employee the same or more favorable benefits immediately after the transfer and such plan shall be deemed to be a CareFirst Plan for purposes of this Section 6.17(a) with respect to such employee. After the requirements of this Section 6.17(a) cease to apply to any CareFirst Plans, Purchaser and the Surviving Corporation shall cause such CareFirst Plans or other comparable employee benefit plans of the Purchaser Companies or the CareFirst Companies to provide, with respect to the employees of the CareFirst Companies as of the Effective Time (the "CareFirst Employees"), other than those employees whose employment is covered by a collective bargaining agreement, benefits that are~~

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in the agreement no less favorable than those provided to such CareFirst Employees as of the date of this agreement

(b) Purchaser and the Surviving Corporation shall cause any employee benefit plans (as defined in Section 3(3) of ERISA) in which any CareFirst Employees first become eligible to participate on or after the Effective Time (the "New CareFirst Plans") to (i) waive all pre-existing conditions, exclusions and waiting periods thereunder with respect to the participation and coverage requirements applicable to such CareFirst Employees and their beneficiaries, (ii) credit such CareFirst Employees and their beneficiaries with the deductibles, coinsurance amounts or maximum out-of-pocket payments satisfied under the comparable CareFirst Plans during the same calendar year, and (iii) recognize all service of the CareFirst Employees with the CareFirst Companies for purposes of eligibility to participate and vesting. Service of the CareFirst Employees with the CareFirst Companies will also be recognized for purposes of benefits accrual under any New CareFirst Plan that is a defined benefit pension plan with a benefit formula based on final average compensation, provided that such plan shall provide for an offset for any benefit payable for the same period of service with the CareFirst Companies under any Pension Plan.

(c) After the Effective Time, Purchaser and the Surviving Corporation shall cause the CareFirst Companies to continue to comply with their agreements and covenants and to perform their obligations respecting the CareFirst Plans under Section 7.5 of the Business Affiliation Agreement dated December 23, 1998, by and between CareFirst and BCBSO.

(d) The agreements and covenants in this Section 6.17 shall survive the Closing and are intended to benefit the CareFirst Companies, BCBSO and the CareFirst Employees, each of whom shall have the right to individually enforce such agreements and covenants. No provision of this Section 6.17 shall create any third party beneficiary rights in any person to continued employment or resumed employment with any CareFirst Company.

including

#### Section 6.18. Insurance Against Certain Tax Events.

CareFirst will seek to purchase for the benefit of the Tax-Exempt Entities an insurance policy effective as of the Closing Date insuring the Tax-Exempt Entities against the risks assumed by the Tax-Exempt Entities pursuant to the Indemnity Agreement described in Section 7.3(f)(iv). The Purchaser shall cooperate with CareFirst in securing such policy and agree to contribute up to \$5 million for the premium for such insurance policy, and may contribute more in its sole discretion, but shall not be obligated to do so. In the event the premium for such insurance policy exceeds \$5 million, and CareFirst shall purchase the policy, the Aggregate Stock Consideration payable hereunder shall be reduced by the amount of shares of Purchaser Common Stock with an aggregate Average Market Price equal to the amount of the premium not paid by the Purchaser.

's reasonable requests

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